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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,506	04/15/2004	Daisuke Tsutsumi	26B-034	6563

23400 7590 08/09/2006

POSZ LAW GROUP, PLC  
12040 SOUTH LAKES DRIVE  
SUITE 101  
RESTON, VA 20191

EXAMINER
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FIGUEROA, JOHN J

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/824,506	Applicant(s) TSUTSUMI ET AL.	
	Examiner John J. Figueroa	Art Unit 1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/15/04 &amp; 3/11/05</u> .   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed March 11, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of the listed DE 689 23 583 T2 patent that is in German and not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. However, Examiner has found European and U.S. equivalents of said German patent that are in English, namely EP 345 094 A1 and USPN 5,625,002. They have been considered and cited in the attached PTO-892 form

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by PCT Application Publication Number WO 2001/27204 A1 to Matsuoka et al., hereinafter 'Matsuoka'.

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Examiner notes that the original PCT publication is in the Japanese language. Thus, for the purposes of the instant rejection, Examiner is relying on an English equivalent, namely United States Patent Number 6,830,792 B1.

Matsuoka discloses a thermoplastic resin structure that is formed from a resin composition comprising 5 to 80% by volume of a polyolefin resin and 20 to 95% of a polyphenylene sulfide resin (PPS), wherein said polyolefin resin has a melt flow rate (MFR) of 0.1 to 70 g/10 min and can comprise an ethylene/ $\alpha$ -olefin copolymer modified with an unsaturated carboxylic acid or derivative, such as glycidyl acrylate, glycidyl methacrylate, glycidyl itaconate or glycidyl citraconate. (Abstract; col. 2, lines 38-65; col. 3, lines 7-20; col. 5, lines 35-45; col. 5, line 53 to col. 6, line 15; col. 9, line 45 to col. 10, line 28; See instant specification, page 31, line 20 to page 32, line 6 for list of epoxy group-containing monomers of olefin component) The preferred polyolefins are ethylene homopolymers and ethylene/ $\alpha$ -olefin copolymers having a MFR of 0.1 to 50g/10min, wherein said copolymer has an ethylene content of 35-95 mol%. (Col. 15, lines 1-13)

Matsuoka also discloses single layer and multi-layered structures comprising a thermoplastic resin structure of said PPS resin composition that can be formed by any known manner, such as extrusion, injection or compression molding; wherein the molding temperature generally falls within a range higher than the melting point of the PPS resin by 5 to 50°C (melt-molding). (Col. 17, line 47 to col. 18, line 6) These structures of the thermoplastic resin are disclosed in Matsuoka to have good gas

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barriers properties and used in containers for transportation of liquid chemicals and gases, such as an automobile fuel tank. (Col. 18, lines 7-59)

Matsuoka discloses that the PPS resin can be prepared by any known method, thus not *requiring* it to be crosslinked by thermal oxidation (col. 7, lines 27-43).

Matsuoka also states that the MFR of the PPS is not limited (col. 7, lines 15-42) and further discloses PPS resins having a MFR of 100 and 300 g/10 min, respectively, in the examples (col. 20, lines 17-24). Moreover, Matsuoka discloses in said examples PPS resin compositions containing an olefin blend of ethylene/glycidyl methacrylate copolymer with ethylene/ethyl acrylate copolymer having an MFR of 1.5. (Col. 19, line 57 to col. 20, line 13; col. 20, line 60 to col. 21, line 7; Tables 1-4; particularly samples PPS-3, PPS-4 and PO- 8)

Although Matsuoka does not expressly disclose MFR for the resultant PPS resin composition, because the compositions disclosed in Matsuoka and those encompassed by the instant claims are the same, they must inherently possess the same physical properties, such as MFR.

Regarding forming the PPS resin by a "flushing method", this is a product by process limitation that does not patentably distinguish a product claim from the prior art. When the reference teaches a product that appears to be the same as, or an obvious variant of, the product set forth in a product-by-process claim although produced by a different process." MPEP §2113. See *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) and *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985).

Thus, the claims are anticipated by Matsuoka.

**Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Figueroa whose telephone number is (571) 272-8916. The examiner can normally be reached on Mon-Thurs & alt. Fri 8:00-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DAVID J. BUTTNER  
PRIMARY EXAMINER

JJF/RAG

